The Board met at its offices at 450 N Street, Sacramento, at 9:35 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

PROPERTY TAXES HEARING

Broadwing Communications Service (7630), 214611

1999-2001, \$69,700,000.00 Escaped Assessments, \$6.970,000.00 Penalty, \$16,305,000.00

In-Lieu Interest

For Petitioner: John Corum, Representative For Property and Special Taxes Department: Paul Steinberg, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the valuation of the assets is excessive.

Whether capacity and fiber optic usage rights should be assessed to the lessees. Whether property leased to petitioner should be included as fixed assets.

Whether relief from the penalty should be granted.

Action: Upon motion of Ms. Migden, and unanimously carried, Ms. Migden, Mr. Parrish,

Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be submitted for decision.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Melville Nguyen, 220529 2000, \$1,353.00 Assessment

For Appellant: Melville Nguyen, Taxpayer
For Franchise Tax Board: Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Issue: Whether appellant has shown he qualifies for head of household filing status.

Appellant's Exhibit: Miscellaneous Document (Exhibit 1.1)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish,

Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for

decision.

Exhibits to these minutes are incorporated by reference.

A-C Compressor Corporation, 192031 1992, \$56,483.00 or more Claim for Refund 1993, \$124,232.00 or more Claim for Refund Dover Corporation, 192551 1992, \$228,265.00 or more Claim for Refund Novacap, Inc., 192556

1993, \$57,044.00 or more Claim for Refund

For Claimant: Brian E. Gledhill, Attorney

Anthony Kosinski, Taxpayer Dennis Haase, Tax Counsel

For Franchise Tax Board: Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Notices of Action on Cancellation, Credit or Refund issued by respondent to appellants properly credited appellants with the correct aggregate amounts of the tax payments made by them or on their behalf.

Respondent's Exhibit: Payment Table (Exhibit 1.2)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Yang Wang, 215137 1999, \$2,009.00 Assessment

For Appellant: Yang Wang, Taxpayer

For Franchise Tax Board: Kathryn Courtnier, Senior Legal Analyst

Terry Collins, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Issues: Whether appellant has shown that the additional underlying tax assessed by respondent should be abated.

Whether appellant has shown that interest on the additional underlying tax should

be abated.

Respondent's Exhibit: 1999 California Resident Income Tax Return (Exhibit 1.3)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Square D Company, 162822

1985, \$163,836.00 Assessment

1986, \$390,754.00 Assessment

1987, \$443,624.00 Assessment

1988, \$230,024.00 Assessment

1989, \$237,011.00 Assessment

1990, \$611,426.00 Assessment

Circuit Foil USA, Inc

1987, \$56,934.00 Assessment

1988, \$233,278.00 Assessment

1990. \$22.170.00 Assessment

For Franchise Tax Board:

For Appellant:

Richard A. Hanson, Attorney

Vincent A. Inendino, Vice President, Tax

Lorig Mushegain, Tax Counsel

Jozell Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Issues: Whether appellant-Square D Company was engaged in a unitary business with its subsidiary, Palatine Hill Leasing, Inc. (PHL), and PHL's direct subsidiaries.

Whether appellant-Square D Company may include the "gross receipts" from the sale of short-term securities and other debt instruments, and from the maturation of bonds in the denominator of its California sales factor.

Whether the Notices of Action (NOA's) properly revised the assessments to Circuit Foil USA, Inc., to reflect respondent's determination that Circuit Foil USA, Inc., was unitary with appellant-Square D Company and its subsidiaries beginning in year ending 1987.

Whether the NOA's accurately reflect payments previously made by appellant-

Square D Company.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish,

Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for

decision.

Bill B. and Sandra L. Robinson, 203265

1999, \$840.00 Assessment

For Appellant: Bill B. Robinson, Taxpayer

Sandra L. Robinson, Taxpayer

For Franchise Tax Board: Christine Roloff, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Whether respondent properly used appellants' non-California source pension and

interest income in the calculation of appellants' California tax liability.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish,

Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for

decision

SPECIAL TAXES APPEALS HEARING

Zarko Stanojevic, 169130

1-1-94 to 12-31-98, \$ 42,918.67 Fee, \$00.00 Failure to File Penalty

For Petitioner: Zarko Stanojevic, Taxpayer

Nevenka H. Morris, Interpreter

For Property and Special Taxes Department: Judy Nelson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Whether feepayer is liable for payment of the determined underground storage Issues:

tank maintenance fee.

Whether the determination was issued timely under the statute of limitations.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish,

Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be

submitted for decision.

The Board requested that staff review the ways it notifies underground storage tank owners of their responsibilities to register and pay the underground storage tank maintenance fee and consider ways to improve the fee program.

SALES AND USE TAX APPEALS HEARINGS

McDonnell Douglas Corporation, 106386

1-1-95 to 12-31-97, \$1,963,420.55 Tax

For Petitioner: Joseph A. Vinatieri, Attorney

Jason C. DeMille, Attorney

Tim Lemaster, Witness

Randy Ferris, Tax Counsel For Sales and Use Tax Department:

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying

contributions were disclosed.

Issues: Whether petitioner's sale of the aircraft at issue is exempt from both the sales tax and the use tax.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

MTC Distributing, 116257, 213504

7-1-97 to 6-30-00, \$6,262.47 Tax

For Petitioner: William D. Johns, Taxpaver For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Whether petitioner made a taxable retail sale of assets to a related corporation.

Whether petitioner owes use tax on its purchases of software maintenance

agreements from two out-of-state vendors.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON PROPERTY TAXES HEARING HELD JANUARY 27, 2004

Broadwing Communications Service (7630), 214611

Final Action: Ms. Migden moved to deny the petition as recommended by staff. The motion failed to carry, Ms. Migden voting yes, Mr. Parrish and Mr. Leonard voting no, Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Mr. Parrish moved to abate the penalty, otherwise deny the petition as recommended by staff. No vote was taken.

Ms. Migden moved to deny the petition as recommended by staff. The motion was seconded by Mr. Chiang but failed to carry, Ms. Migden and Mr. Chiang voting yes, Mr. Parrish and Mr. Leonard voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition be denied as recommended by staff as to Issues 1, 2, and 3.

Mr. Parrish moved to abate the penalty. The motion failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden and Mr. Chiang voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES **HEARINGS HELD JANUARY 27, 2004**

Melville Nguyen, 220529

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

A-C Compressor Corporation, 192031

Dover Corporation, 192551

Novacap, Inc., 192556

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.¹

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Da-Mark Associates, LLC, 209028

1998. \$88.00 Claim for Refund

1999. \$88.00 Claim for Refund

2000, \$88.00 Claim for Refund

2001, \$106.15 Claim for Refund

For Claimant: No Appearance

For Franchise Tax Board: Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Issue:

Whether appellant has shown that it had "reasonable cause" for late payment of

annual tax.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD JANUARY 27, 2004

Yang Wang, 215137

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

A-C Compressor Corporation, 192031

Dover Corporation, 192551

Novacap, Inc., 192556

Final Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board rescinded its prior vote and deferred consideration of this matter to the next Board meeting.

Square D Company/Circuit Foil USA, Inc., 162822

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

¹ The Board rescinded this action later in the day.

Bill B. and Sandra L. Robinson, 203265

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD JANUARY 27, 2004

Zarko Stanojevic, 169130

Final Action: Mr. Parrish moved to assess the tax based on a 36 month tax period instead of the entire 5-year tax period. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried,

Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ms. Mandel requested that the Law Guides in the Boardroom be updated for future meetings.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JANUARY 27, 2004

McDonnell Douglas Corporation, 106386

Final Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board deferred consideration of this matter to the next Board meeting.

MTC Distributing, 116257, 213504

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 12:10 p.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss settlements (Revenue and Taxation Code sections 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 12:35 p.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

The Board recessed at 12:36 p.m. and reconvened at 1:35 p.m. with Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Mr. Leonard directed staff to prepare a memo to inform the Board, with a copy to the taxpayer, of the amount of taxes and interest in the proposed assessment to be decided upon at the next Board meeting in the appeals of *A-C Compressor Corporation*, 192031; Dover Corporation, 192551; and, Novacap, Inc., 192556.

SALES AND USE TAX APPEALS HEARINGS

Conway Communications, LLC, 197547

2-1-99 to 3-31-02, \$76,344.03 Tax

For Petitioner: Michael J. Conway, Taxpayer

Mark Stockdale, CPA

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Issue: Whether petitioner has met its burden to establish that disallowed claimed sales

for resale without the support of resale certificates were in fact nontaxable sales for resale.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden and Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

Bhawni Corporation, 153966

4-1-96 to 5-31-00, \$29,672.83 Tax, \$4,865.30 Penalty

For Petitioner: Stewart Burch, Enrolled Agent For Sales and Use Tax Department: Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's failure to withhold an amount equal to JK Corp.'s outstanding liability to the State under the Sales and Use Tax Law from the sales proceeds for petitioner's purchase of JK Corp.'s business caused petitioner to become personally liable for such liability.

Whether petitioner, as the successor of predecessor JK Corp.'s business, is entitled to relief from the penalties assessed against JK Corp.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the penalties be deleted, otherwise redetermined as recommended by the Appeals Division. The Board directed staff to offer the petitioner a generous payment plan.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD JANUARY 27, 2004

Conway Communications, LLC, 197547

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

Moufeed Kaid Mohamed, 165922

7-1-98 to 6-30-01, \$45,716.79 Tax, \$00.00 Negligence Penalty For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence warrants a greater allowance for pilferage.

Whether the evidence shows that the audited taxable merchandise costs are

excessive.

Whether the evidence shows that the audited markup is excessive.

Whether the evidence shows that the audited taxable sales are based on an

incomplete examination of the records.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tschudin Grinding Systems, 146132

1-1-94 to 3-31-00, \$11,871.16 Tax, \$1,187.17 Failure to File Penalty For Petitioner: No Appearance

For Sales and Use Tax Department: John Abbott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Issues: Whether the evidence warrants an additional allowance for nontaxable sales for

resale.

Whether relief from the penalty for failure to file returns is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mohammed Ali Khan, 169997

4-1-98 to 3-31-01, \$00.00 Tax, \$9,794.62 Fraud Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Sales and Use Tax Department properly assessed the fraud penalty.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried,

Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board

ordered that the petition be redetermined as recommended by the Appeals Division.

Sodini Enterprises, Inc., 164578 7-1-98 to 6-30-01, \$18,418.59 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's sales at its pizza restaurant of cold food products to go in a form suitable for consumption on its premises were exempt from tax.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

PUBLIC HEARING

Proposed Amendments to Conflict of Interest Code, Regulation 6001

Jean Ogrod, Acting Chief Counsel, made introductory remarks stating for the record that there are no proposed changes to the Board's Conflict of Interest Code itself. The proposed changes to Appendix A reflect the classification and organizational changes that have taken place at the Board since the Conflict of Interest Code was amended last year. The statement regarding those auditors filing pursuant to Regulation 18733 is being amended to reflect new Form 700-A adopted by the Fair Political Practices Commission. In Appendix B, the name of the Ballast Water Management Fee Law is being changed to the Marine Invasive Species Fee Collection Law. (Exhibit 1.4.)

Speakers: Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the amendments to *Conflict of Interest Code, Regulation 6001, General Provisions*, as published.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

OII Third Partial Consent Decree Cash Account Escrow, 139239

1992, \$2,843.00 Tax, \$1,421.50 Late Filing and Failure to File Penalties

1993, \$9,558.00 Tax, \$4,779.00 Late Filing and Failure to File Penalties

1994, \$12,067.00 Tax, \$6,033.50 Late Filing and Failure to File Penalties

1995, \$28,707.00 Tax, \$14,353.50 Late Filing and Failure to File Penalties

1996, \$36,273.00 Tax, \$18,136.50 Late Filing and Failure to File Penalties

1997, \$37,007.00 Tax, \$18,503.50 Late Filing and Failure to File Penalties

Considered by the Board: September 11, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Parrish moved to sustain the action of the Franchise Tax Board. The motion

was seconded by Ms. Mandel but no vote was taken.

The Board deferred consideration of this matter to the next Board meeting.

Polaroid Corporation, 62415

1990, \$5,287.00 Assessment

1991, \$3,151,099.00 Assessment

Considered by the Board: March 26, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Ms. Migden absent, the Board adopted a decision granting the petition for rehearing.

SALES AND USE TAX MATTERS, CREDITS AND CANCELLATIONS, ADJUDICATORY

Heilig-Meyers Furniture Company, 245011

10-1-97 to 8-15-00, \$93,945.19 Tax

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed. Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board approved the credit and cancellation as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Office Furniture L.A.*, *Inc.*, 140910.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board made the following orders:

Office Furniture L.A., Inc., 140910

1-1-98 to 6-30-00, \$17,566.59 Fraud Penalty

Action: The Board deferred consideration of this matter.

Doris Cutler, 28800

1-1-93 to 6-30-98, \$11,008.47 Tax, \$00.00 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Phillip N. Cutler, 29001

1-1-93 to 6-30-98, \$11,008.47 Tax, \$00.00 Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

National Film Laboratories, Inc., 89000013400

7-1-93 to 12-31-96, \$146,985.30 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Tah Lih Investment, Inc., 194099

10-1-98 to 9-30-01, \$53,442.19 Tax, \$00.00 Penalty

Action: Redetermine as recommended by the Appeals Division

Fastener Hardware Limited, 156397

10-1-98 to 9-30-01, \$40,477.43 Tax, \$4,047.79 Negligence Penalty Action: Redetermine as recommended by the Appeals Division

Chantha Thong, 241430

August 11, 2003 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: Arlene Antoine,

212926.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board made the following orders:

Sahibzada Tariq Ahmad Rafeeqi and Khalida T. Rafeeqi, 203268

1999, \$3,910.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Amertranz Worldwide, Inc., 204954

3-30-99, \$39,859 Calim for Refund

Action: Sustain the action of the Franchise Tax Board.

Arlene Antoine, 212926

1996, \$3,455.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Hugh M. Boyd (Deceased), 208988

1986, \$20,414.26 Assessment

1987. \$2.283.91 Assessment

1988, \$14,665.40 Assessment

1989, \$6,909.46 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jessica Caimol, 220026

2001. \$922.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Randy W. Carlson, 212924

1998, \$1,159.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mario Flamenco, 219075 2000, \$546.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Perseveranda M. Goins, 218631

2000, \$551.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Karen Johnson, 209802

1989, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Deborah L. Kmet, 217866

2000, \$1,025.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

William L. Ludlum, 216413 2001, \$2,637.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Magnetek, Inc., 198051

6-30-91, \$18,400.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Joseph E. Marcoux, 89002464010

1996, \$14,043.00 Tax, \$2,261.75 Late Filing Penalty, \$3,510.75 Notice and Demand Penalty Action: Sustain the action of the Franchise Tax Board and impose a \$2,500 frivolous appeal penalty.

Kenneth J. Mariotti, 217300

1998, \$536.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

A. Aaron Medlock, 218483

1999, \$256.00 Assessment

Action: Modify the action of the Franchise Tax Board.

Michael Michalisin, 202133

1989, \$491.66 Assessment

Action: Sustain the action of the Franchise Tax Board.

James J. and Cynthia Nules, 218529

1998, \$604.16 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Anthony E. O'Hanlon, 210194 2000, \$744.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ana Rita Palmer, 213508 2000, \$250.00 Assessment

Action: Sustain the action of the Franchise Tax Board and imposed a \$750.00 frivolous

appeal penalty.

Viren Patel, 210174

2000, \$2,921.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Shirley R. Pogany, 213290 1999, \$1,077.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Jerome and Sachiko Queeney, 207237

1994, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael Spiering, 213326

1994, \$3,670.83 Claim for Refund 1996, \$7,208.46 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mark O. Takanen, 217721 2000, \$266.75 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Diosdado V. Telmo, 214772 2000, \$1,030.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James E. Tucker, 213108

1997, \$12,843.07 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael L. Williams, 219533

2000, \$324.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Roger Yuezhi and Li Li Zhong, 215261

1998, \$739.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Dieter Stussy, 202274 1992, \$3,080.00 Assessment 1993, \$2,119.00 Assessment 1994, \$1,172.00 Assessment

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Moysey Gekhtberg*, et al., 216008.

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board made the following orders:

Wayne F. Belnap, 204809

2002, \$282.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Akop M. Dzulfayan, 221845 2002, \$275.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jahronay Jacobs, 212624 2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Cathy Lewis, 215864

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Rogelio G. Martin, 218280 2000, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ronald Milne, 212613

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Sue Perry, 218342

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Tammie Robertson, 218271

2002, \$1.00 or more Claim for Credit

Action: Modify the action of the Franchise Tax Board.

Tara Robinette, 212743

2002. \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Moysey Gekhtberg, et al., 216008

Action: The Board took no action.

Zena Joy Lewis, 182330 2000, \$600.00 Claim for Credit

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

The Board deferred consideration of the following matters: *Baxter Healthcare Corporation*, 236381; Pratt & Whitney Power Systems, Inc., 246470; and, Borders, Inc., 246251.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish not participating in *Budget Rent A Car System, Inc., 246182*, Mr. Chiang not participating in *Pioneer Foods, Inc., 218315*; and *Pacific Bell Leasing Company, 246231*; Ms. Migden absent, the Board made the following orders:

Pioneer Foods, Inc., 218315 10-1-99 to 9-30-02, \$66,418.72

Action: Approve the redetermination as recommended by staff. Mr. Chiang not

participating.

Textron Financial Corporation, 198723

7-1-97 to 6-30-00, \$1,691,471.35

Action: Approve the redetermination as recommended by staff.

Huntair, Inc., 187470

4-1-99 to 12-31-99, \$220,640.86

Action: Approve the redetermination as recommended by staff.

Folger Adam Security, Inc., 209735

1-1-99 to 12-31-01, \$292,637.88

Action: Approve the redetermination as recommended by staff.

Baxter Healthcare Corporation, 236381

7-1-02 to 12-31-02, \$122,866.00

Action: The Board took no action.

Central Concrete Supply Company, Inc., 246150

7-1-03 to 7-31-03, \$65,664.12

Action: Approve the relief of penalty as recommended by staff.

Pratt & Whitney Power Systems, Inc., 246470

7-1-99 to 9-30-02, \$56,589.59

Action: The Board took no action.

Kent A. Logan, 242776

1-1-99 to 12-31-99, \$55,823.20

Action: Approve the relief of penalty as recommended by staff.

DCFS Trust, 246147

4-1-03 to 6-30-03, \$71,877.70

Action: Approve the relief of penalty as recommended by staff.

Pacific Bell Leasing Company, 246231

7-1-03 to 7-31-03, \$99,382.68

Action: Approve the relief of penalty as recommended by staff. Mr. Chiang not

participating.

Gero Vita Laboratories, Inc., 220470

7-1-98 to 9-30-00, \$80,192.69

Action: Approve the relief of penalty as recommended by staff.

Tempur-Pedic, Inc., 246306 10-30-95 to 9-30-00, \$71,024.54

Action: Approve the relief of penalty as recommended by staff.

Borders, Inc., 246251

7-1-03 to 7-31-03, \$171,949.74

Action: The Board took no action.

Middleton Hyundai-Isuzu, LLC, 246131

4-1-03 to 6-30-03, \$52,957.10

Action: Approve the relief of penalty as recommended by staff.

Budget Rent A Car System, Inc., 246182

4-1-03 to 6-30-03, \$575,047.10

Action: Approve the relief of penalty as recommended by staff. Mr. Parrish not

participating.

Nordstrom, Inc., 216148

1-1-99 to 6-30-03, \$3,347,662.00

Action: Approve the denial of claim for refund as recommended by staff.

Square D Company, 246318 1-1-99 to 12-31-01, \$769,347.41

Action: Approve the denial of claim for refund as recommended by staff.

Wayne-Dalton Corporation, 240684

1-1-98 to 6-30-01, \$55,123.97

Action: Approve the denial of claim for refund as recommended by staff.

Integration Technologies, LLC, 245408

3-31-99 to 6-30-99, \$99,355.44

Action: Approve the denial of claim for refund as recommended by staff.

Love's Country Stores of California, 138246

10-01-00 to 3-31-01, \$73,354.00

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matter: *Marine World Joint Power Authority*, 246270.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Chiang not participating in *Calpeak Power, LLC, 216997;* Ms. Mandel not participating in *GMC Sales Corporation, 207102*, Ms. Migden absent, the Board made the following orders:

Coastal Imports, Inc., 240086

1-1-03 to 3-31-03, \$219,531.77

Action: Approve the credit and cancellation as recommended by staff.

Newegg Computers, 244156

4-1-03 to 6-30-03, \$209,822.00

Action: Approve the credit and cancellation as recommended by staff.

Nanette Ujdur, 245455

10-1-99 to 9-30-00, \$59,760.93

Action: Approve the credit and cancellation as recommended by staff.

Heilig-Meyers Furniture Company, 245005

8-16-00 to 9-30-00, \$2,001,312.66

Action: Approve the credit and cancellation as recommended by staff.

Marcella L. Bade, 245451 7-20-94 to 6-30-97, \$62,379.78

Action: Approve the credit and cancellation as recommended by staff.

Marian Medical Center, 216903

7-1-99 to 3-31-03, \$624,018.55

Action: Approve the refund as recommended by staff.

Westfalia Separator, Inc., 234644

4-1-03 to 6-30-03, \$254,070.83

Action: Approve the refund as recommended by staff.

Seagate Technology, 131452

1-1-98 to 6-30-00, \$863,229.15

Action: Approve the refund as recommended by staff.

Oliver De-Silva, Inc., 245411

1-1-00 to 12-31-02, \$289,975.69

Action: Approve the refund as recommended by staff.

Delano Regional Medical Center, 196345

10-01-97 to 3-31-03, \$136,215.78

Action: Approve the refund as recommended by staff.

United Duralume Products, Inc., 242188

7-1-00 to 6-30-03, \$67,176.51

Action: Approve the refund as recommended by staff.

The Regents of the University of California, 245580

10-1-97 to 3-31-01, \$57,830.76

Action: Approve the refund as recommended by staff.

Anritsu Company, 236088

4-1-00 to 12-31-01, \$71,654.40

Action: Approve the refund as recommended by staff.

San Jose Mercury News, Inc., 245410

4-1-01 to 12-31-02, \$56,264.77

Action: Approve the refund as recommended by staff.

J. R. Simplot Company, 205029

4-1-02 to 6-30-02, \$51,798.09

Square D Company, 162657 1-1-99 to 12-31-01, \$427,479.56

Action: Approve the refund as recommended by staff.

Howard Industries, Inc., 245541 1-1-98 to 6-30-00, \$164,270.74

Action: Approve the refund as recommended by staff.

Photo Control Corporation, 182693

4-1-99 to 6-30-02, \$51,676.37

Action: Approve the refund as recommended by staff.

LTX Corporation, 133062 1-1-99 to 12-31-01, \$394,170.70

Action: Approve the refund as recommended by staff.

Suss Micro Tec, Inc., 224772 4-1-01 to 12-31-01, \$56,367.28

Action: Approve the refund as recommended by staff.

Wayne-Dalton Corporation, 240680

1-1-98 to 12-31-01, \$51,678.57

Action: Approve the refund as recommended by staff.

Integration Technologies, LLC 49291

3-31-99 to 6-30-99, \$198,637.06

Action: Approve the refund as recommended by staff.

Sunamerica Life Insurance Company, 187267

4-1-99 to 6-30-03, \$470,039.51

Action: Approve the refund as recommended by staff.

Marine World Joint Power Authority, 246270

10-1-99 to 3-31-03, \$110,097.89

Action: The Board took no action.

Premier Waterworld Concord, Inc., 242699

4-1-02 to 9-30-02, \$64,461.97

Action: Approve the refund as recommended by staff.

Qwest Interprise America, Inc., 239619

4-1-02 to 6-30-02, \$122,349.95

Careee and Company, Ltd., 244073

1-1-00 to 12-31-02, \$64,152.35

Action: Approve the refund as recommended by staff.

Metatec International, Inc., 152710

7-1-99 to 3-31-00, \$85,465.91

Action: Approve the refund as recommended by staff.

Edison Material Supply, LLC, 222457

10-1-01 to 3-31-03, \$788,024.91

Action: Approve the refund as recommended by staff.

Neptune Management Corporation, 242701

7-1-99 to 12-31-02, \$733,063.05

Action: Approve the refund as recommended by staff.

Novar Controls Corporation, 239922

1-1-95 to 6-30-01, \$94,034.07

Action: Approve the refund as recommended by staff.

GTE Wireless Service Corporation, 140901

4-1-99 to 6-30-00, \$70,701.34

Action: Approve the refund as recommended by staff.

Tenet Health System QA, Inc., 245603

7-1-99 to 6-30-92, \$57,922.09

Action: Approve the refund as recommended by staff.

Ledcor Industries (USA), Inc., 173291

4-1-00 to 12-31-00, \$129,915.75

Action: Approve the refund as recommended by staff.

Calpeak Power, LLC, 216997

10-1-01 to 3-31-03, \$6,440,746.58

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

McClellan Jet Services, LLC, 183167

10-1-01 to 3-31-01, \$202,332.40

Action: Approve the refund as recommended by staff.

Exodus Communications, Inc., 183234

1-1-02 to 3-31-02, \$205,756.33

Southern California Edison Company, 222370

10-1-01 to 3-31-03, \$247,255.98

Action: Approve the refund as recommended by staff.

GMC Sales Corporation, 207102

10-1-01 to 6-30-02, \$101,318.12

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Ambrosia Interior Design, Inc., 246214

4-1-98 to 3-31-01, \$50,201.51

Action: Approve the refund as recommended by staff.

Grimmway Enterprises, Inc, 145338

7-1-98 to 12-31-99, \$108,067.84

Action: Approve the refund as recommended by staff.

Palmone, Inc., 243658

4-1-99 to 3-31-02, \$125,368.70

Action: Approve the refund as recommended by staff.

Wescom Credit Union, 239621

4-1-03 to 6-30-03, \$78,689.50

Action: Approve the refund as recommended by staff.

Nova Information Systems, Inc., 236089

1-1-03 to 3-31-03, \$66,361.08

Action: Approve the refund as recommended by staff.

ASM Lithography, Inc., 238392

4-1-01 to 3-31-02, \$458,554.84

Action: Approve the refund as recommended by staff.

Enplas Tesco, Inc., 224767

10-1-00 to 3-31-02, \$180,949.73

Action: Approve the refund as recommended by staff.

DirecTV Enterprises, Inc., 174341

10-1-97 to 9-30-00, \$137,287.44

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 220492

1-1-03 to 3-31-03, \$1,922,461.09

Lobel Financial Corporation, 238519

4-1-03 to 6-30-03, \$71,838.42

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 242700

4-1-98 to 3-31-02, \$965,407.58

Action: Approve the refund as recommended by staff.

Union Acceptance Corporation, 217088

10-1-97 to 12-31-02, \$2,583,551.72

Action: Approve the refund as recommended by staff.

Mercury Casualty Company, 245373

1-1-98 to 6-30-01, \$563,513.55

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *PWG Vintners USA*, *Inc.*, 236812, Ms. Migden absent, the Board made the following orders:

Morton International, Inc., 170779

1-1-01 to 12-31-01, \$67,178.01

Action: Approve the credit and cancellation as recommended by staff.

Morton International, Inc., 246491

1-1-02 to 12-31-02, \$75,246.54

Action: Approve the credit and cancellation as recommended by staff.

Zeneca, Inc., 244466

1-1-02 to 12-31-02, \$82,089.73

Action: Approve the credit and cancellation as recommended by staff.

PWG Vintners USA, Inc., 236812

4-1-03 to 6-30-03, \$97,944.06

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAX MATTERS, CONSENT

With respect to the Property Taxes Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Ms. Migden absent, the Board made the following orders:

Petition for Reassessment of Private Railroad Car Tax

Cryo-Trans, Inc., 241988 2003, \$2,328,083.00 Value

Action: Approve the reduced value of \$2,301,666.00 of private railroad car tax as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petition for Reassessment and Penalty Abatement on Unitary Escape Assessment

01 Communications, Inc., 241990

2002, \$1,460,000.00 Value, \$146,000.00 Penalty, \$87,600.00 Interest

Action: Deny the reassessment and penalty abatement on unitary escaped assessment as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Ms. Migden absent, the Board made the following orders:

Audits

QAI, Inc. (7610)

2002-2003, \$193,800.00 Escaped Assessment, \$28,400.00 Penalty, \$42,600.00 In-lieu interest Action: Adopt the escaped assessment, penalty and in-lieu interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

AllCom USA (7875)

2001-2003, \$55,400.00 Escaped Assessment, \$5,540.00 Penalty, \$7,842.00 In-lieu interest Action: Adopt the escaped assessment, penalty and in-lieu interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAXES MATTERS

Board Consideration of Findings and Decisions

All American Pipeline L.P. (465), 224027

2003, \$61,600,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

All American Pipeline L.P. (465), 225290

2003 Allocation, 53% Santa Barbara County, 26% San Luis Obispo County, 21% Kern County Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

High Desert Power Trust (1127), 224484

2003, \$429,600,000.00

Action: The Board took no action.

Delta Energy Center, LLC (1128), 223881

2003, \$519,100,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Pastoria Energy Facility, LLC (1131), 223879

2003, \$335,000,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Calpine Construction Finance Company (1132), 223882

2003, \$320,400,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Metcalf Energy Center, LLC (1133), 223880

2003, \$71,500,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Otay Mesa Generating Facility, LLC (1134), 223878

2003, \$80,900,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Indigo Generation, LLC (1141), 224754

2003, \$95,100,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Larkspur Energy, LLC (1142), 224756

2003, \$70,700,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

PacWest Telecomm, Inc. (2043), 224022

2003, \$92,300,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

MPower Communications Corporation (7724), 221745

1999-2002, \$4,100,000.00, Escaped Assessment, \$1,690,000.00 Penalty, \$2,535,000.00 In-Lieu Interest

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

Metromedia Fiber Network Services, Inc., (7837), 224024

2003, \$205,480,000.00

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Leonard voting yes, Ms. Mandel not participating, Ms. Migden absent, the Board adopted the Findings and Decision as recommended by staff.

ADMINISTRATIVE SESSION

OFFERS IN COMPROMISE RECOMMENDATION

Jean Ogrod, Acting Chief Counsel, made introductory remarks regarding the Offers in Compromise Recommendation.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board approved the Offers in Compromise of *James Leonis* as recommended by staff.

REQUEST FOR A DELEGATION OF AUTHORITY FOR RELIEF OF INTEREST

Ramon Hirsig, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding the request for a delegation of Authority for Relief of Interest (Exhibit 1.5).

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board adopted the delegation of authority for relief of interest as recommended by staff with a request to receive a report which would included relief of interest due to unreasonable error or delay by Board employees.

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 1.6).

Eileen M. Baier, Associate Tax Auditor, Bakersfield Branch Office Sandra L. Munoz, Tax Technician II, Fuel Taxes Division, Headquarters Jean L. Manes, Tax Technician II, Consumer Use Tax Section, Headquarters Robert M. Martin, Supervisor, Internal Security and Audit Division, Headquarters

Janice McGilvray-Simpson, Associate Programmer Analyst, Technology Services Division, Headquarters

Linda Ramsey, Senior Tax Representative, Fuel Taxes Division, Headquarters Sally Shook, Business Taxes Representative, Van Nuys District Office

Action: Approve the Board Meeting Minutes of October 15, 2003.

Mr. Chiang expressed his sincere appreciation to Sally Shook for her extraordinary service to the State of California and the Board of Equalization. Ms. Shook was instrumental in providing important education advice to taxpayers with regards to taxation of swap meets in the Fourth District.

BOARD COMMITTEE REPORTS

Business Taxes Committee

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board approved the Business Taxes Committee report (Exhibit 1.7).

Mr. Chiang adjourned the Board meeting at 2:25 p.m. in memory of Gerhard R. Von Lippmann, former auditor for the Franchise Tax Board.

The foregoing minutes are adopted by the Board on March 23, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *Aurora E. Fisher, 174601; and, Propeller Portable Computer Products, Inc., 158412.*